

Public Document Pack

Cherwell District Council

Council

Minutes of a meeting of the Council held at Bodicote House, Bodicote, Banbury, OX15 4AA, on 17 October 2016 at 6.30 pm

Present: Councillor Chris Heath (Chairman)
Councillor Maurice Billington (Vice-Chairman)

Councillor David Anderson
Councillor Ken Attack
Councillor Hannah Banfield
Councillor Andrew Beere
Councillor Claire Bell
Councillor Mike Bishop
Councillor Hugo Brown
Councillor Mark Cherry
Councillor Colin Clarke
Councillor Ian Corkin
Councillor Nick Cotter
Councillor Surinder Dhesi
Councillor John Donaldson
Councillor Sean Gaul
Councillor Carmen Griffiths
Councillor Timothy Hallchurch MBE
Councillor Shaida Hussain
Councillor Mike Kerford-Byrnes
Councillor Jolanta Lis
Councillor Alan MacKenzie-Wintle
Councillor James Macnamara
Councillor Kieron Mallon
Councillor Nicholas Mawer
Councillor Andrew McHugh
Councillor Alastair Milne-Home
Councillor Nigel Morris
Councillor Richard Mould
Councillor D M Pickford
Councillor Lynn Pratt
Councillor G A Reynolds
Councillor Barry Richards
Councillor Les Sibley
Councillor Nigel Simpson
Councillor Jason Slaymaker
Councillor Nicholas Turner
Councillor Tom Wallis
Councillor Douglas Webb
Councillor Barry Wood
Councillor Sean Woodcock

Apologies for absence: Councillor Simon Holland
Councillor David Hughes
Councillor Tony Ilott
Councillor Neil Prestidge
Councillor Sandra Rhodes
Councillor Dan Sames

Officers: Sue Smith, Chief Executive
Scott Barnes, Director of Strategy and Commissioning
Karen Curtin, Commercial Director
Ian Davies, Director of Operational Delivery
Paul Sutton, Chief Finance Officer / Section 151 Officer
Kevin Lane, Head of Law and Governance / Monitoring Officer
Natasha Clark, Interim Democratic and Elections Manager

38 **Declarations of Interest**

14. Constitution - Proposed Amendments.
Sue Smith, Declaration, as the report referred to the Chief Executive's appraisal process.

39 **Communications**

The Chairman made the following announcements:

Former Councillor Nigel Randall

The Chairman thanked former Councillor Nigel Randall, who had recently resigned as a district councillor for the Adderbury, Bloxham and Bodicote ward, for his service to the district during his time as a councillor.

Cllr Andrew McHugh

The Chairman welcomed Councillor McHugh to his first Council meeting following the recent by-election.

Chairman's Engagements

A copy of the events attended by the Chairman or the Vice-Chairman was published as a supplement to the main agenda pack.

Briefing on the Primary Authority Scheme

The Chairman advised Council that as Members had expressed an interest in receiving a briefing on the Primary Authority scheme, a session had been arranged for Monday 24 October at 6pm, in the Council Chamber, with Chartered Environmental Health Practitioner Kate Harris. This briefing would explain the basis of what Primary Authority is and how it works. The benefits to businesses, regulators and our councils will be explained.

Parliamentary Boundary Review

The Chairman referred to agenda item 12 regarding the consultation on the Parliamentary Boundary review. The consultation was being run by the Boundary Commission for England which was holding a public hearing in the Council Chambers, Oxford Town Hall on Monday 24 October (10am – 8pm) and Tuesday 25 October (9am – 5pm). Further information, including booking information, could be found on the Boundary Commission website

Agenda Item 13, Remuneration for Councillors Appointed as Non-Executive Directors on Graven Hill Companies

The Chairman advised Members that this item, which had been listed “to follow” on your agenda had now been deferred.

Poppy Appeal

The Chairman showed Members a giant poppy which would be displayed on the front of Bodicote House. Members were asked to make a donation which would be passed on to the British Legion.

Post

The Chairman reminded Members to collect any post from their pigeon holes.

40 **Petitions and Requests to Address the Meeting**

There were no petitions or requests to address the meeting.

41 **Urgent Business**

There were no items of urgent business.

42 **Minutes of Council**

The minutes of the meeting held on Council held on 18 July 2016 and the Minutes of the Special Meeting of Council held on 18 July 2016 were agreed as correct records and signed by the Chairman.

43 **Minutes**

a) Minutes of the Executive, Lead Member Decisions and Executive Decisions made under Special Urgency

Resolved

That the minutes of the meeting of the Executive and Lead Member decisions as set out in the Minute Book be received and that it be noted that since the last meeting of Council on 18 July 2016, one Executive decision had been taken by the Executive which was not included in the 28 day notice on “Local Government Reform in Oxfordshire – Update”.

b) Minutes of Committees

Resolved

That the minutes of Committees as set out in the Minute Book be received.

44 **Thames Valley Police - Address by Chief Constable**

The Chairman welcomed the Police and Crime Commissioner for Thames Valley, Anthony Stansfeld, the Chief Constable of Thames Valley Police, Francis Habgood, and the Cherwell Local Area Commander Superintendent, Kath Lowe, to the meeting.

The Police and Crime Commissioner and Chief Constable Habgood addressed the meeting regarding policing in Thames Valley. A number of Members asked questions and answers were duly provided.

The Chairman thanked the Police and Crime Commissioner, the Chief Constable and Superintendent Lowe.

45 **Questions**

a) Written Questions

There were no written questions.

b) Questions to the Leader of the Council

Questions were asked and answers received on the following issues:

Cherwell District Council position on fracking: Councillor Sean Woodcock

Flytipping: Councillor Surinder Dhesi

Oxfordshire Local Enterprise Partnership (OxLEP) Strategic Economic Plan:

Councillor Nick Cotter

Resettlement of refugee families from Syria in the Cherwell district: Councillor Nick Cotter

Communication between Members and Officers: Councillor Hugo Brown

Cherwell District Council representative on the Oxfordshire Health Overview and Scrutiny Committee: Councillor Hannah Banfield

Cherwell District Council and Banbury Town Council work to support Banbury town centre: Councillor Kieron Mallon

Overpayment of National Non-domestic Rates (NNDR) to Department for Communities and Local Government: Councillor Barry Richards

Lead Member for Finance: Councillor George Reynolds

c) Questions to Committee Chairmen on the minutes

One question to Committee Chairman on the minutes of meetings was asked.

Councillor George Reynolds asked a question of Councillor Nick Mawer, Chairman of the Budget Planning Committee relating to Minute 26, Quarter 1

2016-17 – Revenue and Capital Budget Monitoring Report, of the 30 August 2016 meeting of the Budget Planning Committee whereby the Committee had commented on items currently in the Capital Programme.

The Chairman of the Budget Planning Committee duly responded.

46 **Motions**

There were no motions.

47 **Result of Adderbury, Bloxham and Bodicote Ward By-Election**

The Chief Executive submitted a report to advise Council of the result of the Adderbury, Bloxham and Bodicote by-election held on 22 September 2016, to note changes to membership of Committees as requested by the Conservative Group and to appoint a representative to the Oxfordshire Health Overview and Scrutiny Committee.

Resolved

- (1) That the results of the Adderbury, Bloxham and Bodicote by-election held on 22 September 2016 be noted.
- (2) That the constitution of the Council following the by-election: 38 (79%) Conservatives, 8 (17%) Labour and 2 (4%) Independent councillors, be noted.
- (3) That the following amendments to Committee membership as requested by the Conservative Group following the by-election be noted:

Accounts, Audit and Risk Committee

Add: Councillor Nick Mawer

Budget Planning Committee

Add: Councillor Andrew McHugh

Overview and Scrutiny Committee

Remove: Councillor Nick Mawer

Add: Councillor Andrew McHugh

Planning Committee

Add: Councillor Ian Corkin

Substitutes

Remove: Councillor Ian Corkin

Add: Councillor Andrew McHugh

- (4) That authority be delegated to the Head of Law and Governance, in consultation with the Leader of the Council, to appoint a representative to the Oxfordshire Health Overview and Scrutiny Committee.

48 **Community Governance Review 2016 and Parliamentary Boundary Review Consultation**

The Chief Executive submitted a report to provide details of a Community Governance Review (CGR) to be undertaken, to request appointment of Members to a Working Group for the CGR and to respond to the Parliamentary Boundary Review consultation.

Resolved

- (1) That the Terms of Reference for the Community Governance Review (annex to the Minutes as set out in the Minute Book) be agreed.
- (2) That authority be delegated to the Head of Law and Governance, in consultation with Group Leaders, to appoint two Members per Political Group to a Working Group to consider the Community Governance Review and the Parliamentary Boundary Review.
- (3) That authority be delegated to the Chief Executive to finalise Cherwell District Council's response to the Parliamentary Boundary Review, in consultation with the Working Group

49 **Remuneration for Councillors Appointed as Non-Executive Directors on Graven Hill Companies**

As reported under the Chairman's announcements, consideration of this item had been deferred.

50 **Constitution - Proposed Amendments**

The Head of Law and Governance submitted a report to consider and adopt proposed amendments to the constitution. A similar report was being considered by South Northamptonshire Council on 19 October 2016.

Resolved

- (1) That the terms of reference of the Joint Commissioning Committee be amended to include the following functions:

The role and responsibilities of the Joint Commissioning Committee with regard to Statutory Officer disciplinary action is to:

- Deal with minor instances of unsatisfactory conduct at an early stage.
- Ensure that the Statutory Officer clearly understands the standards of conduct expected of him/her.
- Carry out, or make arrangements for, an investigation when any breach of discipline is alleged.
- Ensure that the Statutory Officer subject to investigation is kept up-to-date with progress.

- Decide, in the most serious cases whether or not to suspend or (where the Statutory Officer has already been suspended by the Head of Paid Service or Monitoring Officer under their delegated powers) to continue the suspension of the Statutory Officer, in accordance with the Statutory Officer disciplinary policy.
 - Report to Full Council (of the employing authority) in respect of a recommendation to dismiss, having convened a Panel comprising Independent Persons in accordance with the Officer Employment Procedure Rules.
- (2) That the Monitoring Officer be given the delegated authority to suspend a Statutory Officer in addition to the Head of Paid Service.
- (3) That the Head of Paid Service and Monitoring Officer be given delegated authority to agree settlement agreements and financial settlements for Statutory Officers in consultation with the Leader of the employing Council.
- (4) That all references to the Joint Appraisal Sub-Committee be deleted from the constitution.
- (5) That the existing scheme of delegation to Directors and Heads of Service be amended to enable them to appoint employees to existing posts at the minimum level within the salary band with discretion to appoint to anywhere within the salary band for the post provided this is within approved budgets.
- (6) That the Head of Law and Governance be requested to amend and update the Constitution in light of the above resolutions and be given delegated authority to make any consequential amendments to the constitution.
- (7) That the membership and quorum for the Joint Councils Employee Engagement Committee be amended as follows:
- Amend the employee representation to 2 representatives from Cherwell's recognised trade union, 1 representative from South Northamptonshire's recognised trade union and 3 members appointed by the Employee Council
 - Members of the Joint Employee Council are able to substitute for the trade union representatives if they cannot find a substitute from their trade union
 - Amend the quorum for the meeting to 2 representatives from the Council side, (1 from Cherwell and 1 from SNC) and 2 Employee representatives (be they from the recognised unions and/or the Joint Employee Council)

The Head of Law and Governance and Assistant Director – Transformational Governance submitted a report to consider and adopt the updated protocol on roles and conflicts of Interest and Ethical Walls procedure.

Resolved

- (1) That, having given due consideration, the updated Protocol on the Respective Roles of Members and Officers and Dealing with Conflicts of Interest and Ethical Walls Procedure (annexes to the Minutes as set out in the Minute Book), subject to a similar decision being taken by South Northamptonshire Council, be adopted.

52

Indemnities for Members and Officers

The Head of Law and Governance and Assistant Director- Transformational Governance submitted a report to consider and adopt a Joint Indemnities Policy for Members and officers.

Resolved

- (1) That, pursuant to the Local Authorities (Indemnities for Members and Officers) Order 2004 (“the Order”) an indemnity to Members and to officers of the Council in the terms set out in the annex to the Minutes (as set out in the Minute Book) be adopted.
- (2) That it be agreed that the Chief Finance Officer secures insurance to cover the liability under the indemnity in the event that such cover is available and subject to him being satisfied that such action would be financially prudent.
- (3) That it be agreed that the appointment of a Member to a position with an organisation which comes within the indemnity shall be treated as an appointment to a role which is deemed to part of the role of an elected member for the purposes of the CDC Members’ Code of Conduct.
- (4) That it be agreed that it be deemed that appointments of Members and officers to organisations (including those where the Council nominates and the organisation formally appoints) be deemed as “advancing the interest of the Council” for the purposes the Terms of Indemnity.

53

Changes to the Arrangements for Appointment of External Auditors

The Chief Finance Officer submitted a report which summarised the changes to the arrangements for appointing External Auditors following the closure of the Audit Commission and the end of the transitional arrangements at the conclusion of the 2017/18 audits.

Resolved

- (1) That the recommendation of the Accounts Audit and Risk Committee to support the Local Government Association (LGA) in setting up a national Sector Led Body by indicating intention to “opt-in” be agreed.

54 **Notification of Urgent Action In relation to the Contract Award for the demolition of the Bolton Road Car Park**

The Chief Executive submitted a report to notify Full Council of urgent action she had taken in relation to the contract award for the demolition of the Bolton Road Car Park.

Resolved

- (1) That the urgent action taken by the Chief Executive to allocate capital receipts of £325,000 for the capital scheme for the Contract Award for the demolition of the Bolton Road Car Park be noted.

55 **Exclusion of the Press and Public**

There being no questions on the exempt minutes, it was not necessary to exclude the press and public.

56 **Questions on Exempt Minutes**

There were no questions on exempt minutes.

The meeting ended at 8.25 pm

Chairman:

Date:

Cherwell District Council

**Local Government and Public Involvement in Health Act 2007
Community Governance Review**

Terms of Reference

Introduction

Cherwell District Council has resolved to undertake a Community Governance Review (CGR) pursuant to Part 4, Chapter 3 of the Local Government and Public Involvement in Health Act 2007 to consider the following Parish matters:

Parish/Area	Matters to be considered
Stratton Audley	The number of Parish Councillors for the Parish Council, following a request from the Clerk for an increase in numbers
Upper Heyford	Splitting the existing Parish area into two, creating a new parish for the 'Heyford Park' area; To determine a name for the new Parish; Cherwell District Council agreed to complete a further CGR on this issue at the conclusion of the last CGR in 2013
Other areas as identified during consultation	Review of Parish Councillor numbers only – increasing or decreasing as requested

The Council will undertake the review in accordance with the Guidance on community governance reviews issued by the Department of Communities and Local Government and the Local Government Boundary Commission for England (LGBCE) in April 2008 (“the guidance”)

What is a Community Governance Review?

A CGR is a review of the whole or part of the Council area to consider one or more of the following:

- Creating, merging, altering or abolishing parishes
- The naming of parishes and the style of new parishes
- The electoral arrangements for parishes, such as the ordinary year of election, council size, number of councillors to be elected to the council and parish warding
- Grouping parishes under a common parish council or de-grouping parishes

The Council is required to ensure that community governance within the area under review will be:

- Reflective of the identities and interests of the community in that area; and
- Is effective and convenient

In doing so the Review is required to take into account:

The impact of existing community governance arrangements on community cohesion; and
The size, population and boundaries of any local community or proposed parish or town Council

Why is the Council undertaking the review?

The guidance states that it is good practice for principal councils (in this context that means this council) to undertake CGRs every 10-15 years. The last review was concluded in December 2013, and during that time the Council committed to undertake a further CGR within 5 years specifically for Upper Heyford.

As the Council has received the request from Stratton Audley regarding number of Parish Councillors, the review will be widened to look at such requests from other Parishes if they so wish. A review of parish boundaries, other than those at Upper Heyford, will not be considered as part of this review.

Consultation

The Council is publishing these terms of reference in draft and seeking comments from interested parties by 21 October 2016. The terms of reference will then be updated and finalised at the first meeting of the CGR Working Group (date to be advised), before being published.

Timetable for the Review

The 2007 Act requires that a principal council must complete a CGR within 12 months of the date of publication of terms of reference. The proposed timetable below complies with the legal requirement.

17 October 2016	Report to Council (including Terms of Reference for the review) appointing Community Governance Review Working Group/delegate authority to Head of Law and Governance to appoint Members
21 October 2016	Deadline for parishes to respond and request consideration of numbers
November 2016	Final Terms of Reference Published
October to December 2016	Work on consultation document for all Upper Heyford residents, and consider requests for numbers review
1 December 2016 to 31 January 2017	Consultation period with residents of all affected areas

Appendix 1

Early February 2017	Meeting with working group to discuss consultation outcomes
20 February 2017	Update report to Full Council
16 May 2017	Report to Council with recommendations
June – July 2017	Consultation of recommendations
16 October 2017	Final report to Council, finalise CGR order

How to respond

Please submit any comments on these draft terms of reference via email to democracy@cherwellandsouthnorthants.gov.uk, or by post to:

CGR
Democratic and Elections Team
Cherwell District Council
Bodicote House
Bodicote
Banbury
OX15 4AA

The Council is particularly interested to know if any other Parish Council's wish to consider reviewing their number of Parish Councillors

The Respective Roles of Members and Officers and Dealing with Conflicts of Interest

Introduction

Cherwell District Council (CDC) and South Northamptonshire Council (SNC) have created a number of shared posts and teams and intend to create further shared posts and teams in the future. Council owned/influenced companies/organisations (Council Entities) have also been created and it is intended to create more in the future.

Shared officers will divide their time on an equal basis between the authorities or on such other basis as is agreed via the approved business case for the relevant service (although peaks of work in one or more councils may result in short term variations from this) and will at all times act in the best interests of both the authorities. Nominated officers may also spend their time serving Council Entities as set out in their letter of nomination from the councils. Underpinning this is an acknowledgment that where a smaller number of senior officers will be serving multiple organisations, there will be a need to reflect this new set of circumstances in the way in which officers have to operate.

Members of the authorities need to be sensitive to this change with regard to the respective roles of officers and members. In particular all members and officers need to be aware of the action to be taken when there is an actual or potential conflict of interest in acting for more than one organisation.

The role of Members

At each authority full Council is collectively responsible for setting Council policy within the defined policy framework. The intention of the authorities is to remain sovereign bodies under the Section 113 agreement, but in setting their own Council policy they will have regard to the views and policies of the other authority and will endeavour to avoid adopting any policy which explicitly and overtly contradicts the policy of the other authority.

CDC has established an Executive to bring forward the delivery of their agreed policies. Members of the Executive are both collectively and individually accountable for carrying through the Council's policy objectives. SNC has also established a Cabinet to bring forward the delivery of its agreed policies and members of the Cabinet are collectively (but not individually) accountable for carrying through the Council's policy objectives.

At neither of the authorities are members directly involved in the day to day provision of services to the public but members of the Executive/Cabinet will have a close involvement with officers in dealing with the effectiveness of service provision. It is recognised that on occasion this may result in the need for immediate contact with officers but where practicable such contact will be on a managed basis. In order to make best use of officer and member time, there will be mutually managed

contact between Executive/Cabinet members and officers on service provision where members pursue matters on behalf of their constituents.

As only Executive/Cabinet lead members/portfolio holders have executive authority/responsibilities as members all other members will need to pursue matters with the appropriate lead member/portfolio holder or officer through a managed approach. A portfolio holder at CDC may take certain decisions on matters within their own portfolio, and within the scheme of delegation of the relevant constitution, but in doing so must be aware of any possible conflict in policy or budget. At SNC, where portfolio holders are not vested with individual decision taking power, such decisions can only be taken by the Cabinet collectively but the same principles and approach will be followed.

No member (portfolio holder or otherwise) should become involved in the day to day management or operation of a service area, which shall be the responsibility of the head of service.

Members may also be appointed as Non-Executive Directors/ Trustees of Council Entities.

The role of Officers

Officers are equally accountable to the Council and the Executive/Cabinet. All shared officers are equally accountable to both Councils and to the Executive and Cabinet as appropriate.

Officers are professional advisers on policy and carry out the instructions of the Council and the Executive/Cabinet as well as exercising powers that are delegated to them and taking operational decisions within their areas of responsibility.

Officers may also be appointed as Directors/ Trustees of Council Entities.

The possibility of conflict between organisations should be minimised by identifying from the outset where potential conflict might arise, operating the ethical walls policy appended and referring, if necessary, such conflict through the dispute resolution mechanism in the Section 113 agreement/ shareholder agreement/ Memorandum of Understanding.

The role of Directors/Trustees

Both members and officers may be Officers may also be nominated and appointed as Directors/ Trustees of Council Entities. This will involve members and officers serving together as board members equally in terms of voting rights and responsibilities. Councillors who are Non-Executive Directors will by their nature have different and often higher levels of involvement with the organisation to which they are appointed than members would normally would have. However, day to day management of operations and staff shall remain the responsibility of the managing director of the Council Entity and board collectively.

How these roles work in practice

Decisions on matters relating to each Council's policy framework are taken by members at meetings of full Council, usually after having considered the recommendations of the Executive/Cabinet or appropriate Committee which in turn considers the recommendations of the officers.

Decisions on policy matters within the relevant Council's policy framework are taken by the Executive/ at CDC and Cabinet at SNC having considered the recommendations of officers.

Decisions on policy matters by Council Entities are taken by the board.

The Councils have an adopted scheme of delegation .This scheme sets out what is delegated to which body or officer, either conditionally or unconditionally. The Councils can review their scheme of delegation at any time to ensure decisions are being taken at the appropriate level. The process of delegation ensures that members are not overloaded with relatively less important matters and can concentrate on important policy issues and the effectiveness of service provision and continuous improvement in service. Members who are not portfolio holders have an important role in representing the views of their constituents and ensuring through scrutiny that the Council's policies and plans are effectively delivered. Some members (portfolio holders and otherwise) have roles on regulatory committees dealing with matters such as planning and licensing. To minimise the possibility of any conflict of interest, or defect in process, the schemes of delegations of the authorities should be harmonised so far as possible. Where differences need to remain there should be a clear business case for this.

Council Entities have adopted articles or a constitution and these documents set out what is delegated to which body or employee, either conditionally or unconditionally. They can be reviewed at any time to ensure decisions are being taken at the appropriate level.

It is recognised that there may be rare occasions where it is not possible to reconcile the interests of two or more organisations with their respective legal responsibilities. Such conflicts shall be managed by ensuring that relevant officers and members in each organisation are ring fenced from each other through the creation of ethical walls in accordance with the appended procedure to ensure that due regard is taken of each organisation and the need for certain matters to remain confidential to one or other organisation.

Statutory requirements

The Councils derive their powers from statute. Some of these are mandatory (i.e the Councils must do them) and some are discretionary (i.e the Councils may carry them out if they wish). In all cases members and officers of both authorities may only operate within the law.

Councils must have a Head of Paid Service, a Monitoring Officer and a Section 151 Officer. These officers are part of the senior management team and have an obligation to act in the best interests of their appointing authority/authorities.

If any of these statutory posts in a shared role consider that there is a conflict of interest within their area of responsibility which is affecting the ability of either Council to function effectively the most appropriate statutory officer may take a report to the appropriate full Councils setting out the conflict of interest and proposals for resolution.

Summary

Members are responsible for setting Council policy.

Officers are responsible for advising members on the setting of Council policy and for ensuring such policy is implemented.

The scheme of delegation determines which body or person deals with particular matters, and at which level decisions are taken.

The day to day management and operation of services is the responsibility of officers.

Where officers are dividing their time between two or more organisations members need to have regard to less time being available for their authority alone and the need to manage contact with officers to ensure the optimum use of both member and officer time.

If conflicts arise in relation to the respective regulatory duties of any of the organisations steps will be taken to ensure the ring fencing of officers and the confidentiality of information as necessary.

Otherwise, where there is actual or potential conflict there are three routes depending on the nature of the conflict,

1. agree to pay for appropriate external support to advise one or more authorities.
2. refer the issue through the dispute mechanism in the section 113 agreement, shareholder agreement or memorandum of understanding.
3. the most appropriate statutory officer may refer the matter to either or both full Councils for resolution.

Ethical Walls Procedure

This procedure is designed to be read alongside the protocol on the Respective Roles of Members and Officers and Dealing with Conflicts of Interest.

It is recognised that there may be rare occasions most commonly in a regulatory context or where a council owned/ influenced company/organisation context (Council Entity) has been established where it is not possible to reconcile the interests of the two Councils or those between the council(s) and a Council Entity with their respective legal responsibilities.

Such conflicts shall be managed by ensuring that relevant officers working for each side are ring fenced from each other to ensure that due regard is taken of the respective and conflicting duties and interests and the need for certain matters to remain confidential to the individual Council or Council Entity. This procedure sets out how this will operate in practice.

Background

An Ethical wall, cone of silence, screen or firewall is a business term describing an information barrier within an organisation that is erected in order to prevent exchanges or communication that could lead to conflicts of interest and/or the disclosure of information which is confidential to one Council or the other or to a Council Entity. For example an ethical wall may be erected to separate and isolate people who make investments from those who are privy to confidential information that could influence the investment decisions, in newspapers between journalists and advertising executives to protect editorial independence and in law firms where different solicitors are acting for different clients on the same issue.

For the vast majority of members and officers there will be no conflict of interest in working for, being appointed to or advising more than one Council or Council Entity, in fact most officers and members will not experience this during their time in local government. However, a small number of officers and members mainly those holding Executive, senior management, statutory, legal, financial, regulatory and planning posts may face situations where they become aware of conflict or potential conflict between the councils or between one or both of the Councils and a Council Entity. There is a need for officers and members in these posts to maintain vigilance in identifying these situations where conflict could arise. Whilst there is no definitive list of these situations, these might include where one authority is consulting the other with regard to planning policy, planning applications, boundary changes, electoral areas or other situations where there is either an implied or express duty to consult and/or co-operate. Similar situations apply with regard to legal matters where the Councils are on either side of a dispute and the consideration of homelessness applications to one Council where there may be a local connection identified with one of the others. Similar situations apply to the Council(s) and Council Entities where an officer or member may be a Director or trustee or where an officer or member who is a Director may be dealing with other officers or members in their capacity as Directors or trustees of another Council Entity.

Appendix 2

In all cases officers and members should always err on the side of caution and seek advice as it is much better to deal with and plan for potential conflicts, as when actual conflicts are identified it may be that too many officers and members are already acting for one side or the other and/or the erection of the Ethical Wall may be too late. The creation of an Ethical Wall does require a level of maturity and respect from those on either side of it. For instance it is not uncommon for a manager to be on one side and a direct report on the other.

If there is a conflict or significant risk of a conflict, between the councils, or between the Council(s) and a Council Entity the officer or member must not act for both, except where the councils or the council(s) and the Council Entity are expressly pursuing the same common objective. In all cases of conflict or potential conflict a decision should be sought immediately from the Monitoring Officer. The Monitoring Officer in deciding whether there is a conflict or whether the officer or member can act for multiple organisations, will ensure that the overriding consideration is the best interests of the individual organisation, and in particular, whether the benefits of the officer or member acting for all them outweighs the risk.

If the Monitoring Officer feel that there is a risk of conflict or that the interest of the organisations are not best served by an officer or member acting for both they will invoke this procedure.

Procedure

When a conflict or potential conflict is identified an officer or member should alert the Monitoring Officer or one of his deputies.

The Monitoring Officer will provide advice to the officer on whether there is a conflict and in all cases alert all JMT members. The Monitoring Officer will maintain an audit trail of his actions and any advice given, including a list of active Ethical Walls.

In the case that a conflict or potential conflict is identified the Monitoring Officer (in consultation with the relevant members/ JMT officers) will draw up a list of the officers who will be representing the interests of each party.

The Monitoring Officer will alert those on the list, JMT members, relevant lead members and any external parties to the discussion, that an Ethical Wall has been put in place and who they should deal with.

Once the Ethical Wall has been erected, officers on either side of the wall should treat and behave towards the other Council or Council Entity and the officers representing it with full regard to the issue in question as if they were an external organisation. That is information supplied by the other party should be thoroughly and critically examined and not taken on trust or face value, and information which is confidential to the interests of the organisation they represent must not be disclosed to the other party.

Whilst this relationship should be respectful and business like, it should be based on auditable correspondence as opposed to verbal communications as such documents could later be relied upon in legal action.

Appendix 2

It should be agreed where files and electronic correspondence should be held and neither party should access information held by the other. Appropriate access restrictions will be established by ICT Services for information held electronically.

Officers should only advise members and officers on their side of the wall. Reports to committees must be in the name of and signed off by officers on the correct side of the wall and officers should not be present at meetings at any time when they are dealing with the issue on the other side of the wall.

The Ethical Wall should only be used for the issue in question and does not extend to any other areas of work.

When the issue in question has been successfully concluded the Monitoring Officer(s) should be notified and they will close the issue on the list of active Ethical Walls if they deem it appropriate.

In the case of an Ethical Wall between the Councils, the list will contain a minimum of two named officers on either side, one of which will be the Monitoring Officer, a Deputy Monitoring Officer or a legal officer. The Head of Paid Service (or in her absence or case of conflict her deputy) will not normally be assigned to either side of the wall and will not become involved in the issue. This enables the Head of Paid Service to arbitrate on any issue including human resources implications which may arise in the operation of this procedure. For employees in shared teams the identity of their employing Council will not necessarily dictate the side of the Wall to which they are allocated.

Statutory Officers and Section 113 Agreement Dispute Resolution Procedure

All Councils must have a Head of Paid Service, a Monitoring Officer and a Section 151 Officer. These officers are part of the management teams and have a legal obligation to act in the best interests of the authorities which appointed them.

It is imperative that the statutory officer system is robust and resilient therefore statutory officers should ensure that they appoint deputy statutory officers who may act for the other council(s) in case they are conflicted. To account for this and also to ensure there is sufficient statutory officer resilience; the recommendation is that each statutory officer appoints at least one, but preferably two deputies.

If any of these statutory posts consider that there is a conflict of interest within their area of responsibility, which has not been resolved through invoking this procedure and which is affecting the ability of any of the individual Councils to function effectively the most appropriate statutory officer(s) may take a report to the full Councils setting out the conflict of interest and proposals for resolution and invoke the Section 113 Agreement dispute resolution procedure between the Councils or the relevant shareholder agreement/ Memorandum of Understanding Dispute resolution procedure for Council Entities if necessary.

Terms of Indemnity

- 1 The Council will, subject to the exceptions set out below, indemnify each of its Members and employees against any loss or damage suffered by the Member or officer arising from his/her action or failure to act in his/her capacity as a Member or officer of the Council.

This indemnity will not extend to loss or damage directly or indirectly caused by or arising from:

- 1.1 any criminal offence, fraud or other deliberate wrongdoing or recklessness on the part of the Member or officer; or
 - 1.2 any act or failure to act by the Member or employee otherwise than in his/her capacity as a Member or officer of the Council.
- 2 The Council will, subject to the exceptions set out below, indemnify each of its Members and officers against the reasonable costs which he/she may incur in securing appropriate legal advice and representation in respect of any civil or criminal proceedings to which he/she is subject.
 - 2.1 “Criminal proceedings” includes any interview or investigation by the Police, and any proceedings before a criminal court, in the United Kingdom.
 - 2.2 This indemnity shall not extend to any advice or representation in respect of any claim or threatened claim in defamation by the Member or officer.
 - 2.2.1 Where any Member or officer avails him/herself of this indemnity in respect of defending him/herself against any criminal proceedings the indemnity is subject to a condition that if, in respect of the matter in relation to which the Member or officer has made use of this indemnity the Member or officer is convicted of a criminal offence in consequence of such proceedings, or and the conviction is not overturned on appeal, the Member or officer shall reimburse the authority for any sums expended by the Council pursuant to the indemnity.
 - 2.3 Where the Council arranges insurance to cover its liability under this indemnity, the requirement to reimburse in Paragraph 2.2 shall apply as if references to the Council were references to the insurer.
 - 3 For the purpose of this indemnity, a loss or damage shall be deemed to have arisen to the Member or officer “in his/her capacity as a Member or officer of the Council” where:
 - 3.1 The act or failure to act was outside the powers of the Council,

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or outside the powers of the Member or officer, but the Member or officer reasonably believed that the act or failure to act was within the powers of the Council or within the powers of the Member or officer (as appropriate) at the time that he/she acted or failed to act, as the case may be;

- 3.2 The act or failure to act occurred not in the discharge of the functions of the Member or officer as a Member or officer of the Council but in their capacity as a member (including a director, trustee) or employee of another organisation including, for the avoidance of doubt, a council controlled/influenced company/organisation, where the Member or officer is, at the time of the action or failure to act, a member or employee of that organisation either –
 - 3.2.1 in consequence of his/her appointment as such member or officer of that organisation by the Council; or
 - 3.2.2 in consequence of his/her nomination for appointment as such member or officer of that organisation by the Council; or
 - 3.2.3 where the Council, either by resolution or via an authorised officer, has specifically approved such appointment as such a member or employee of that organisation as advancing the interests of the Council.
- 4 The Council undertakes not to sue (or join in action as co-defendant) an officer of the Council in respect of any negligent act or failure to act by the officer in his/her capacity as an officer of the Council, subject to the following exceptions:
 - 4.1 Any criminal offence, fraud or other deliberate wrongdoing or recklessness on the part of the officer; or
 - 4.2 Any act or failure to act by the officer otherwise than in his/her capacity as an officer of the Council.
- 5 This indemnity and undertaking will not apply if a Member or officer, without the express permission of the Council or of the appropriate officer of the Council, admits liability or negotiates or attempts to negotiate a settlement of any claim falling within the scope of the indemnity or undertaking.
- 6 This indemnity and undertaking are without prejudice to the rights of the Council to take disciplinary action against an officer in respect of any act or failure to act.
- 7 This indemnity and undertaking shall apply retrospectively to any act or failure to act which may have occurred before this date and shall continue to apply after the Member or officer has ceased to be a Member or officer of the Council as well as during his/her membership of or employment by

the Council.

- 8 This indemnity shall also apply to any officer acting in the capacity of Returning Officer, Acting Returning Officer, Counting Officer, Electoral Registration Officer, Deputy Returning Officer, Deputy Acting Returning Officer, Deputy Counting Officer or Deputy Electoral Registration Officer in relation to the conduct of elections and electoral registration. Where any such officer is acting in the reasonable belief that any act or failure to act is within the powers of the Returning Officer, Electoral Registration Officer or Counting Officer he or she shall be deemed to be acting in his/her capacity as an officer of the Council for the purposes of this indemnity.